

REMARKS

Summary of the Office Action & Formalities

Status of Claims

Claims 1, 2, 4-10, and 14-23 are all the claims pending in the application.

Art Rejections

1. Claims 1, 2, 4-8, and 14-19 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Knickerbocker (US 4,252,507).
2. Claims 1, 2, 9, 10 and 20-23 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Garcia et al. (US 6,398,079) in view of Knickerbocker (US 4,252,507).

Applicant respectfully traverses.

Claim Rejections - 35 U.S.C. § 103(a)

1. *Claims 1, 2, 4-8, and 14-19 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Knickerbocker (US 4,252,507).*

In rejecting claims 1, 2, 4-8 and 14-19 over Knickerbocker, the grounds of rejection state:

Knickerbocker discloses, in figs. 1, a fluid dispenser comprising a fluid reservoir and dispenser member comprising a body 49 defining a chamber; an actuator rod 22; a peripheral bearing collar including a gasket (G) coming into abutment at least indirectly against an edge of an opening of the fluid reservoir; wherein the axial height between the bottom face of the collar and the top end of the actuator rod is substantially equal to the axial height between the bottom face of the collar and the bottom of the body and substantially equal to the axial height of a neck of the reservoir; a dispensing head 16 mounted on the top of the rod.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the height and diameter of claimed components of the fluid dispenser of Knickerbocker as claimed, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges or values involves only routine skill in the art. In re Aller, 105 USPQ 233.

(Office Action at page 2.)

Regarding independent claims 1 and 2, Knickerbocker does not disclose at least “wherein the axial height HS1 between the bottom face of the collar and the top end of the actuator rod is substantially equal to the axial height HI1 between the bottom face of the collar and the bottom end of the body.” The Examiner alleges that Figure 1 of Knickerbocker discloses a fluid dispenser where HS1 approximately equals HI1. It is well established, however, that “arguments based on drawings not *explicitly* drawn to scale in issued patents are unavailing.” *Nystrom v. Trex Co.*, 424 F.3d 1136, 1149 (Fed. Cir. 2005)(emphasis added). Further, “[a]bsent any written description in the specification of quantitative values, arguments based on measurement of a drawing are of little value.” *In re Wright*, 569 F.2d 1124, 1127 (C.C.P.A. 1977). Knickerbocker does not indicate that Figure 1 is made to scale nor does it describe any quantification of the dimensions of the device in the specification. Thus, Knickerbocker cannot properly be considered as disclosing the claimed relationship between the dimensions.

Even if, for the sake of argument alone, one were to measure Figure 1 of Knickerbocker, it still would not disclose the relationships between the recited dimensions in claims 1 and 2. As shown in the attached appendix, the dimensions of Figure 1 of Knickerbocker disclose that: HS1 = 4.1 cm; and HI1 = 7.3 cm. Thus, in Knickerbocker $HS1 \neq HI1$. As such, even if one improperly relies on the patent figures as does the Examiner in the grounds of rejection, Knickerbocker does not disclose the features of claim 1.

Additionally, claim 1 indicates that the height of the neck HC (“about 7 mm to 9 mm”) is approximately equal to the inside diameter of the neck Di (“8 mm”) and that the outer diameter of the neck Do (“about 13 mm”) is greater than the height of the neck HC (“about 7 mm to 9 mm”). Stated in other terms, claim 1 recites that $Do > HC$ and $HC \approx Di$. Knickerbocker does

not disclose such relationships between the dimensions. As apparent from the attached appendix, even if one were to improperly rely on the patent figures as does the Examiner, Figure 1 of Knickerbocker discloses that: $HC = 5.5$ cm; $Di = 3.1$ cm; and $Do = 4.8$ cm. Thus, if the figures had been disclosed as being to scale, Knickerbocker discloses that $HC > Do > Di$. In view of the above, Applicants respectfully submit that Knickerbocker does not disclose the claimed relationships between the dimensions $HS1$, $HI1$, HC , Do , and Di .

The Examiner further alleges that it would have been obvious through routine experimentation to achieve the recited height and diameter of the components in claims 1 and 2. However, “[a] particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation.” MPEP § 2144.05(II)(B) (citing *In re Antoine*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977)). Nothing in Knickerbocker indicates that the relationship between the claimed dimensions is result-effective. Knickerbocker does not mention the claimed dimensions, let alone the relationship between the dimensions. In fact, Knickerbocker does not disclose any dimensions for any aspect of the device. As such, Knickerbocker has not established that the relationship between the claimed dimensions is result-effective and the relationship between the claimed dimensions would not have been achieved through routine experimentation.

Regarding claims 4-8, and 14-19, Applicants submit that these claims are allowable at least by virtue of their dependency from independent claims 1 and 2.

2. Claims 1, 2, 9, 10 and 20-23 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Garcia et al. (US 6,398,079) in view of Knickerbocker (US 4,252,507).

In rejecting claims 1, 2, 9, 10 and 20-23 over Garcia in view of Knickerbocker, the grounds of rejection state:

Garcia et al. disclose, in fig. 1, a fluid dispenser comprising a fluid reservoir and dispenser member comprising a body 14 defining a chamber; an actuator rod 46; a peripheral bearing collar 411 including a gasket coming into abutment at least indirectly against an edge of an opening of the fluid reservoir; wherein the axial height between the bottom face of the collar and the top end of the actuator rod is substantially equal to the axial height between the bottom face of the collar and the bottom of the body; a dispensing head 4 mounted on top of the rod; a cover hoop 5; and a piston 48 sliding in a top section disposed entirely outside of the neck of the reservoir.

Garcia does not disclose the neck of the reservoir having an axial height being equal to the axial height between the bottom face of the collar and the top end of the actuator rod, and the axial height between the bottom face of the collar and the bottom of the body.

Knickerbocker teaches disclose a neck of a reservoir having an axial height being equal to the axial height between a bottom face of a collar and a top end of the actuator rod, and a axial height between the bottom face of the collar and the bottom of the body.

(Office action at page 3.)

Regarding independent claims 1 and 2, Garcia does not disclose at least “wherein the axial height HS1 between the bottom face of the collar and the top end of the actuator rod is substantially equal to the axial height HI1 between the bottom face of the collar and the bottom end of the body.” The Examiner alleges that Figure 1 of Garcia discloses a fluid dispenser where HS1 approximately equals HI1. Once again, Garcia does not indicate that Figure 1 is made to scale nor does it describe any quantification of the dimensions of the device in the specification. Therefore, Garcia also cannot be properly considered as disclosing the relationships between the claimed dimensions.

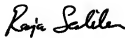
Further, the Examiner acknowledges that Garcia does not disclose “an axial height [of the neck HC] being equal to the axial height between the bottom face of the collar and the top end of the actuator rod [HS1]. . .” The Examiner relies on Knickerbocker as disclosing such features. As discussed above, however, Knickerbocker does not disclose HC as being equal to HS1. Nor would it have been obvious through routine experimentation to create the claimed relationship between the dimensions because the relationships have not been identified as result-effective variables.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Raja N. Saliba
Registration No. 43,078

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: December 10, 2008

APPENDIX - ANNOTATED FIGURE 1 FROM KNICKERBOCKER (US 4,252,507)

U.S. Patent

Feb. 24, 1981

4,252,507

